

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
Auto Compliance Bureau
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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of

MERCURY INSURANCE
COMPANY,

MERCURY CASUALTY
COMPANY, AND

CALIFORNIA AUTOMOBILE
INSURANCE COMPANY,

Respondents.

File No. NC-03027545

FIRST AMENDED:

NOTICE OF NONCOMPLIANCE
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 1858.1

ORDER TO SHOW CAUSE, STATEMENT
OF CHARGES, AND NOTICE OF HEARING
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 790.035/790.05

ACCUSATION PURSUANT TO
CALIFORNIA INSURANCE CODE
SECTION 704

TO: MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY, and
CALIFORNIA AUTOMOBILE INSURANCE COMPANY:

NOTICE OF NONCOMPLIANCE PURSUANT TO CALIFORNIA

INSURANCE CODE SECTION 1858.1¹

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of
California ("Commissioner") has good cause to believe that your rates, rating plans or rating

¹ All statutory references are to the California Insurance Code, unless otherwise indicated.

1 systems and underwriting rules violate and have violated the California Insurance Code, as
2 described below.

3 1.

4 Respondents at all relevant times have been insurers licensed by the Commissioner to
5 transact insurance in this state. All of Respondents' policies pertinent to this matter are subject to
6 sections 1861.01(c), 1861.03 and 1861.05.

7 2.

8 On June 30, 2000, in the Superior Court for the State of California, County of San
9 Francisco ("Court"), in case no. 313367, Robert Krumme filed a civil complaint under California
10 Business and Professions Code sections 17200 *et seq.* On April 11, 2003, the Court entered
11 Findings of Fact and Conclusions of Law after Trial ("Findings and Conclusions") in favor of
12 Krumme. The following paragraphs of the Findings and Conclusions are incorporated by
13 reference into this Notice and constitute allegations by the Commissioner:

14 Findings of Fact:

15 Incorporated: 1 – 50, 56, 57

16 Not incorporated: 51, 52, 53, 54, 55

17 Conclusions of Law:

18 Incorporated: 1-8, 9 (lines 9 – 15 up until "license."), 10 – 25

19 3.

20 From July 1, 1996, to April 11, 2003, Respondents willfully permitted their insurance
21 agents to charge "broker fees" to Respondents' policyholders. In charging these fees,
22 Respondents' agents acted in the course and scope of their agency. Under California law, all
23 payments by policyholders which are a part of the price of insurance, including all sums paid to
24 an insurance agent, are considered premium. Consequently, Respondents constructively received
25 the "broker fees" (i.e. premium) collected by their agents. Respondents did not receive the
26 Commissioner's prior approval to charge or receive the moneys constituting the "broker fees."
27 As a result of permitting its agents to charge and collect the broker fees, Respondents
28

1 constructively charged and collected premium in excess of the rates approved for them by the
2 Commissioner, in violation of section 1861.01(c).

3 4.

4 Because Respondents' agents charged broker fees of varying amounts, Respondents
5 insureds were subjected to unfair rate discrimination, in violation of section 1861.05(a).
6 Respondents willfully permitted the rate discrimination to occur.

7 5.

8 The facts alleged in paragraphs 1 – 4 establish that Respondents willfully used a rate,
9 rating plan or rating system in violation of Chapter 9 of Part 2 of Division 1 of the Insurance
10 Code, and provide grounds for a fine of \$10,000 for each policy in which a Respondent permitted
11 a broker fee to be charged by one of its agents, pursuant to section 1858.07(a).

12
13 ORDER TO SHOW CAUSE, STATEMENT OF CHARGES,

14 AND NOTICE OF HEARING PURSUANT TO

15 CALIFORNIA INSURANCE CODE SECTION 790.035/790.05

16 6.

17 From July 1, 1996, to April 11, 2003, Respondents published advertisements that
18 compared Respondents' premiums with the premiums of competitors. The advertisements
19 indicated that Respondents' rates were lower than the rates of Respondents' competitors. In the
20 advertisements, Respondents willfully failed to disclose that broker fees might be charged in
21 addition to the premium. By not mentioning the broker fees in the advertisements, Respondents
22 willfully misrepresented the actual price insurance consumers could expect to pay for insurance
23 from Respondents, and thus deceived and misled consumers. The advertisements were also
24 deceptive and misleading because the undisclosed broker fees in some cases made the price of
25 insurance from Respondents greater than the price from one or more of the competing insurers
26 cited in the advertisements. Respondents comparative rate advertisements violated sections
27 790.03(a) and (b).

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7.

Beginning sometime after April 11, 2003, Respondents disclosed that broker fees might be charged in addition to premium. However, in their television advertisements, the disclosures have been of such short duration, with such small type, that very few consumers have been able or would be able to notice and understand the disclosures. Not only have the disclosures been designed and presented in a manner that would render them ineffective, their deficiency has been so blatant that Respondents could not have reasonably or in good faith believed them to be adequate. Consequently, Respondents have in effect continued, after April 11, 2003, willfully to fail to disclose in their televised comparative rate advertisements that broker fees might be charged in addition to premium. By not mentioning the broker fees in the advertisements, Respondents have willfully misrepresented the actual price insurance consumers could expect to pay for insurance from Respondents, and thus deceived and misled consumers. The advertisements have also been deceptive and misleading because the undisclosed broker fees in some cases made the price of insurance from Respondents greater than the price from one or more of the competing insurers cited in the advertisements. Respondents televised comparative rate advertisements during the time in question therefore violate sections 790.03(a) and (b).

8.

The facts alleged in paragraphs 6 and 7 establish that Respondents willfully engaged in unfair or deceptive acts or practices defined in sections 790.03, and constitute grounds to impose a civil penalty of \$10,000 for each act. For the purpose of calculating the total amount of the civil penalty under section 790.035, a separate act shall exist for each and every date on which any Respondent's advertisement of the type described in paragraphs 6 and 7 appeared in any newspaper, appeared in any correspondence mailed to any prospective insured in this state, or appeared in any television commercial.

Respondents are ordered to appear at a hearing, on a date to be determined and separately noticed, and show cause, if any exists, why it is not liable as alleged in this pleading.

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ACCUSATION

9.

The facts alleged in paragraphs 1 – 8 are realleged. Those facts establish that Respondents conducted their business fraudulently, and provide grounds for the Commissioner to suspend their certificates of authority for one year, pursuant to section 704(a).

Dated: March 22, 2006

CALIFORNIA DEPARTMENT OF INSURANCE

By _____/s/_____
Jon A. Tomashoff, CPCU
Senior Staff Counsel

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